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October 24, 2011

OCT 24 2011

VIA FACSIMILE 212-805-7928

The Honorable Michael H. Dolinger
United States District Judge
Daniel Patrick Moynihan
U.S. Courthouse
500 Pearl Street
New York, New York 10007

Re: *Sutherland v. Ernst & Young LLP* (10 cv 3332)(KMW)(MHD)

Dear Judge Dolinger:

I am writing to respectfully request a conference before Your Honor at the earliest possible time to discuss discovery in the *Sutherland* case. As you now, Defendant has filed a Motion For Reargument of Judge Wood's decision denying Defendant's Arbitration Motion. The Reargument Motion raises the issue of what impact, if any, the Supreme Court's decision in *AT&T Mobility v. Conception* has on the arbitration decision issued in this case. Your Honor's order had stayed decision on all pending motions until Judge Wood reaches a decision on the Motion for Reargument. It is not clear at this time when that Motion will be finally resolved.

However, the Court did not enter a stay of all discovery in this case and in fact on every previous occasion, prior to the decision on the Arbitration Motion, when Defendants requested such a stay, it was denied by the Court. [Docket Nos. 31, 46 and 75] However, because of the nature of Defendants' objections to production of discovery, including the objection that discovery should not be made until these pending motions are decided, the present posture of the case is that all discovery and all further proceedings have effectively been halted. In the present procedural posture, Defendant declines to produce any further discovery at this time. Given the length of the delay, the amount which has to be done to get this case ready for trial, and the Court's prior clearly expressed intention that the case should move forward toward trial as quickly as practicable, I think that some discovery now is clearly appropriate.

I am requesting a hearing before Your Honor to determine whether any discovery should now be directed to proceed while these motions are pending. The Court has already decided, and I believe it will adhere to, the decision that the arbitration clauses in these cases, if enforced, will

SUBPOENA ORDER

Deined pending the District Court's disposition
of the motion for rearargument.

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deny these Plaintiffs' right to vindicate their statutory rights. It is equally true, as a matter of due process, that the mere presence of an arbitration "issue" should not be allowed to delay indefinitely the ability of these Plaintiffs to pursue the remedies and rights provided to them by the legislatures of New York and the United States.

Respectfully,

Max Folkenflik

MF/vm

cc: Estela Díaz, Esq. (*via e-mail*)
Gregory W. Knopp, Esq. (*via e-mail*)
Daniel L. Nash, Esq. (*via e-mail*)
Joel Cohn, Esq. (*via e-mail*)
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FAX Cover Sheet

Date: October 31, 2011

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Re: Sutherland v. Ernst & Young LLP
10 Civ. 3332 (KMW)) (MHD)

Endorsed order: *Denied pending the District Court's disposition of the motion for reargument.*

From: Magistrate Judge Michael H. Dolinger
United States District Court
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